



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

JUL 27 2011

REPLY TO THE ATTENTION OF:

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Kevin M. Boyle, President
Schulze & Burch Biscuit Company
1133 West 35th Street
Chicago, Illinois 60609

Re: In the Matter of Schulze & Burch Biscuit Company, Docket No. CAA-05-2011-0034

Dear Mr. Boyle:

Enclosed is a file-stamped Consent Agreement and Final Order (CAFO) which resolves Schulze and Burch Biscuit Company (Schulze), Docket No. CAA-05-2011-0034. As indicated by the filing stamp on its first page, we filed the CAFO with the Regional Hearing Clerk on July 27, 2011.

Pursuant to paragraph 10 of the CAFO, Schulze must pay the civil penalty within 30 days of August 26, 2011. Your electronic funds transfer must display the case name, case docket number CAA-05-2011-0034 and the billing document number **2751103A043**.

Please direct any question regarding this case to Ann Coyle, Associate Regional Counsel, at 312-886-2248.

Sincerely,

A handwritten signature in cursive script that reads "Sara Breneman".

Sara Breneman
Chief
Air Enforcement and Compliance Assurance Branch,
MI/WI Section

Enclosure

cc: Regional Hearing Clerk
U.S. EPA, Region 5

Carey S. Rosemarin
Law Offices of Carey S. Rosemarin, P.C.

Mr. Ray Pilapil, Chief
Compliance and Enforcement Section
Illinois Environmental Protection Agency

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5**

In the Matter of:

**Schulze & Burch Biscuit Company
Chicago, Illinois,**

Respondent.

) **Docket No. CAA-05-2011-0034**
)

) **Proceeding to Assess a Civil Penalty**
) **Under Section 113(d) of the Clean Air Act**
) **42 U.S.C. § 7413(d)**

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JUL 27 2011

Consent Agreement and Final Order

**REGIONAL HEARING CLERK
USEPA
REGION 5**

1. Complainant, the Director of the Air and Radiation Division, U.S. Environmental Protection Agency (EPA), Region 5, brought this administrative action seeking a civil penalty under Section 113(d) of the Clean Air Act (the Act), 42 U.S.C. § 7413(d).

2. On March 29, 2011, EPA filed the Complaint in this action against Respondent Schulze & Burch Biscuit Company. The Complaint alleges that Respondent violated the construction and operating permit requirements of the Illinois State Implementation Plan (SIP), 35 IAC §§ 201.142 and 201.143, at its facility in Chicago, Illinois.

Stipulations

3. Respondent admits the jurisdictional allegations in the Complaint and neither admits nor denies the factual allegations in the Complaint.

4. Respondent waives any right to contest the allegations in the Complaint and its right to appeal this Consent Agreement and Final Order (CAFO).

5. Respondent certifies that, to the best of its knowledge, it is complying fully with 35 IAC §§ 201.142 and 201.143.

6. Respondent consents to the assessment of the civil penalty specified in this CAFO and to the terms of this CAFO.

7. The parties agree that settling this action without further litigation, upon the terms in this CAFO, is in the public interest.

8. Respondent certifies that it uses and will continue to use low-volatile organic matter, reformulated blueberry, strawberry, natural wildberry, and natural and artificial wildberry flavorings in those respective varieties of its toaster pastries at its Chicago facility at least until December 31, 2013.

Civil Penalty

9. In consideration of Respondent's cooperation and agreement to perform a supplemental environment project and other matters as justice may require, Complainant agrees to mitigate the proposed penalty of \$160,998 to \$19,425.

10. Within 30 days after the effective date of this CAFO, Respondent must pay the \$19,425 civil penalty by electronic funds transfer, payable to "Treasurer, United States of America," and sent to:

Federal Reserve Bank of New York
ABA: 021030004
Account No. 68010727
SWIFT address: FRNYUS33
33 Liberty Street
New York, New York 10045
Field Tag 4200 of the Fedwire message should read:
"D68010727 Environmental Protection Agency"

In the comment or description field of the electronic funds transfer, state the case title, In the Matter of Schulze & Burch Biscuit Company, the docket number of this CAFO, and the billing document number.

11. Respondent must send a notice of payment that states the case title, In the Matter of: Schulze & Burch Biscuit Company, the docket number of this CAFO and the billing

document number to the Compliance Tracker, Air Enforcement and Compliance Assurance Branch and to Ann Coyle at the following addresses when it pays the civil penalty:

Attn: Compliance Tracker (AE-17J)
Air Enforcement and Compliance Assurance Branch
Air and Radiation Division
U.S. EPA, Region 5
77 W. Jackson Boulevard
Chicago, Illinois 60604

Ann L. Coyle (C-14J)
Office of Regional Counsel
U.S. EPA, Region 5
77 W. Jackson Boulevard
Chicago, IL 60604
coyle.ann@epa.gov

12. This civil penalty is not deductible for federal tax purposes.
13. If Respondent does not pay timely the civil penalty, or any stipulated penalties due under Paragraph 28, below, EPA may bring an action to collect any unpaid portion of the penalty with interest, handling charges, nonpayment penalties, and the United States enforcement expenses for the collection action under Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5). The validity, amount, and appropriateness of the civil penalty are not reviewable in a collection action.
14. Pursuant to 31 C.F.R. § 901.9, Respondent must pay the following on any amount overdue under this CAFO. Interest will accrue on any overdue amount from the date payment was due at a rate established by the Secretary of the Treasury. Respondent must pay a \$15 handling charge each month that any portion of the penalty is more than 30 days past due. In addition, Respondent must pay a quarterly nonpayment penalty each quarter during which the assessed penalty is overdue according to Section 113(d)(5) of the Act, 42 U.S.C. § 7413(d)(5).

This nonpayment penalty will be 10 percent of the aggregate amount of the outstanding penalties and nonpayment penalties accrued from the beginning of the quarter.

Supplemental Environmental Project

15. Respondent must complete a supplemental environmental project (SEP) designed to protect public health and the environment by reducing the amount of volatile organic matter (VOM) it uses in flavorings in toaster pastries manufactured at its facility.

16. Scope of Work. At its Chicago facility, Respondent must complete the SEP as follows:

- a. Cause the apple, cherry, chocolate and/or marshmallow flavorings (the "Apple Group") used in its toaster pastries to be reformulated to reduce the net VOM content of those flavorings. Respondent may use any combination of the flavorings in the Apple Group to complete this SEP.
- b. Purchase and use reformulated, low VOM-content Apple Group flavorings in its toaster pastries through the end of calendar year 2013.
- c. Through the use of reformulated Apple Group flavorings, reduce the pounds of VOM used in toaster pastries made at the facility by 20,000 pounds between January 1, 2012, and December 31, 2013.

17. Documentation and Progress Reports.¹ Respondent must submit periodic progress reports as follows:

- a. By January 31, 2012, for each Apple Group flavoring:
 - i. Document the reformulation process, with original documentation, including the VOM content of the original flavoring, the amount of original flavoring needed to produce a batch of toaster pastry jam (lbs. of flavoring/batch), the VOM content of the reformulated flavoring and the amount of reformulated flavoring needed to produce a batch of toaster pastry jam (lbs. flavoring/batch). A "batch" is defined as 500 gallons of prepared jam.

¹ Respondent may assert a claim of business confidentiality under 40 C.F.R. Part 2, Subpart B, for information submitted under this paragraph. Information subject to a business confidentiality claim is available to the public only to the extent allowed by 40 C.F.R. Part 2, Subpart B. If Respondent fails to assert a business confidentiality claim, EPA may make all submitted information available, without further notice, to any member of the public who requests it.

- ii. Document all costs incurred by Respondent to cause and/or allow its toaster pastry products to be made with reformulated lower-VOM content flavorings, including: the date, type of work conducted, numbers of hours worked and pay rate of the employees. Provide copies of invoices, purchase orders or canceled checks that specifically identify and itemize the individual cost of the goods and services purchased and/or used in the research and development process.
- b. For each Apple Group flavoring not successfully reformulated by the end of calendar year 2011, submit a progress report, with the information required by Paragraph 17.a., above, when the flavoring is successfully reformulated. Continue to submit progress reports every six months (by July 31 for the period January 1 through June 30, and by January 31 for the period July 1 through December 31) with the information required by Paragraph 17.a., above, until the reformulation is successful, or alternatively, until Respondent concludes that reformulation cannot succeed.
- c. By January 31, 2013, for calendar year 2012 and by January 31, 2014, for calendar year 2013, document the amount of VOM emission reductions achieved by Respondent that year through the use of reformulated Apple Group flavorings. In each report, for each flavoring, document the cost of the original flavoring, the cost of the reformulated flavoring, and the amount of the reformulated flavoring used by Respondent that year. To do so, provide copies of invoices, purchase orders or canceled checks that specifically identify and itemize the individual cost of the reformulated flavorings and provide production records demonstrating the amount of the reformulated flavoring used.

18. Respondent must spend at least \$146,000 to cause the Apple Group flavorings to be reformulated and used in its toaster pastries and to purchase reformulated Apple Group flavorings through the end of calendar year 2013.

19. Respondent must obtain from the respective manufacturers of the Apple Group flavorings material safety data sheets, which will be used to document the reformulated flavorings' VOM content.

20. Respondent must continuously use the reformulated Apple Group flavorings through the end of calendar year 2013.

21. Respondent certifies that it is not required to perform or develop the SEP by any law, regulation, grant, order or agreement or as injunctive relief as of the date it signs this CAFO. Respondent further certifies that it has not received, and is not negotiating to receive, credit for the SEP in any other enforcement action.

22. Respondent must maintain copies of the underlying research and data for all reports submitted to EPA pursuant to the CAFO, for three years from the completion of the SEP. Respondent must provide the documentation of any underlying research and data to EPA within 14 days of EPA's request for the information.

23. Respondent must submit a SEP completion report to EPA by January 31, 2014. This report must contain the following information:

- a. The information required by Paragraph 17.c. for calendar year 2013;
- b. Detailed description of the SEP as completed;
- c. Description of any operating problems and the actions taken to correct the problems;
- d. Certification that Respondent, to its knowledge, has completed the SEP in compliance with this CAFO; and
- e. Description of the environmental and public health benefits resulting from the SEP (quantify the benefits, if feasible).

24. Respondent must submit all notices and reports required by this CAFO by first class mail to the Compliance Tracker in the Air Enforcement and Compliance Assurance Branch at the address provided in Paragraph 11, above.

25. In each report that Respondent submits as provided by this CAFO, it must certify that the report is true and complete by including the following statement signed by one of its officers:

I certify that I am familiar with the information in this document and that, based on my inquiry of those individuals responsible for obtaining the

information, it is true and complete to the best of my knowledge. I know that there are significant penalties for submitting false information, including the possibility of fines and imprisonment for knowing violations.

26. Within 30 days after receipt of the SEP completion report described in Paragraph 25, above, EPA must notify Respondent in writing that:

- a. It has satisfactorily completed the SEP and the SEP report;
- b. There are deficiencies in the SEP as completed or in the SEP report and EPA will give Respondent 30 days to correct the deficiencies; or
- c. The deficiencies referred to in Paragraph 26.b. have not been satisfactorily addressed and EPA will seek stipulated penalties under Paragraph 28.

27. If EPA exercises option b, above, Respondent may object in writing to the deficiency notice within 10 days of receiving the notice. The parties will have 30 days from EPA's receipt of Respondent's objection to reach an agreement. If the parties cannot reach an agreement, EPA will give Respondent a written decision on its objection. Respondent will comply with any requirement that EPA imposes in its decision to the extent such decision is consistent with this CAFO. If Respondent does not complete the SEP as required by EPA's decision, Respondent will pay stipulated penalties to the United States under Paragraph 28, below.

28. If Respondent violates any requirement of this CAFO relating to the SEP, Respondent must pay stipulated penalties to the United States as follows:

- a. Except as provided in subparagraph b, below, if Respondent failed to meet the requirements of Paragraph 16, above, and spent less than \$146,000, as provided in Paragraph 18, above, Respondent must pay a penalty of \$58,275.
- b. If Respondent failed to meet the requirements of Paragraph 16, above, but EPA determines that Respondent made good faith and timely efforts to complete the SEP and certified, with supporting documents, that it spent at least 90 percent of \$146,000, as provided in Paragraph 18, above, Respondent will not be liable for any stipulated penalty under subparagraph a, above.

- c. If Respondent completed the SEP satisfactorily, but spent less than 90 percent of the amount set forth in Paragraph 18, Respondent must pay a penalty of \$14,600.
- d. If Respondent did not submit timely the SEP completion report or any other report required by Paragraph 17, Respondent must pay penalties in the following amounts for each day after the report was due until it submits the report:

<u>Penalty per violation per day</u>	<u>Period of violation</u>
\$250	1 st through 14 th day
\$500	15 th through 30 th day
\$1,000	31 st day and beyond

29. EPA's determinations of whether Respondent satisfactorily completed the SEP and whether Respondent made good faith and timely efforts to complete the SEP will bind Respondent.

30. Respondent must pay any stipulated penalties within 15 days of receiving EPA's written demand for the penalties. Any and all such demands shall clearly state the specific basis for the demand. Respondent will use the method of payment specified in Paragraph 10, above, and will pay interest, handling charges, and nonpayment penalties on any overdue amounts.

31. Any public statement that Respondent makes referring to the SEP must include the following language, "Schulze & Burch Biscuit Company undertook this project under the settlement of the U.S. Environmental Protection Agency's enforcement action against Schulze & Burch Biscuit Company for violations of the federal Clean Air Act and Illinois State Implementation Plan."

32. If an event occurs that causes or may cause a delay in completing the SEP as required by this CAFO:

- a. Respondent must notify EPA in writing within 10 days after learning of an event which caused or may cause a delay in completing the SEP. The notice must describe the anticipated length of the delay, its cause(s), Respondent's past and proposed actions to prevent or minimize the delay and a schedule to carry out those actions. Respondent must take all reasonable actions to avoid

or minimize any delay. If Respondent fails to notify EPA according to this paragraph, Respondent will not receive an extension of time to complete the SEP.

- b. If the parties agree that circumstances beyond the control of Respondent caused or may cause a delay in completing the SEP, the parties will stipulate to an extension of time no longer than the period of delay.
- c. If EPA does not agree that circumstances beyond the control of Respondent caused or may cause a delay in completing the SEP, EPA will notify Respondent in writing of its decision and any delays in completing the SEP will not be excused.
- d. Respondent has the burden of proving that circumstances beyond its control caused or may cause a delay in completing the SEP. Increased costs for completing the SEP will not be a basis for an extension of time under subparagraph b, above. Delay in achieving an interim step will not necessarily justify or excuse delay in achieving subsequent steps.

33. For federal income tax purposes, Respondent will neither capitalize into inventory or basis, nor deduct any cost or expenditures incurred in performing the SEP.

General Provisions

34. This CAFO resolves only Respondent's liability for federal civil penalties for the violations alleged in the Complaint.

35. This CAFO does not affect the rights of EPA or the United States to pursue appropriate injunctive or other equitable relief or criminal sanctions for any violation of law.

36. This CAFO does not affect Respondent's responsibility to comply with the Act and other applicable federal, state, and local laws. Except as provided in Paragraph 34, above, compliance with this CAFO will not be a defense to any actions subsequently commenced pursuant to federal laws administered by EPA.

37. This CAFO constitutes an "enforcement response" as that term is used in EPA's Clean Air Act Stationary Source Civil Penalty Policy to determine Respondent's "full compliance history" under Section 113(e) of the Act, 42 U.S.C. § 7413(e).

38. The terms of this CAFO bind Respondent, its successors, and assigns.
39. Each person signing this consent agreement certifies that he or she has the authority to sign for the party whom he or she represents and to bind that party to its terms.
40. Each party agrees to bear its own costs and attorney's fees in this action.
41. This CAFO constitutes the entire agreement between the parties.

Schulze & Burch Biscuit Company, Respondent

July 13, 2011
Date

James McBride
James McBride
Vice President of Quality Assurance
Schulze & Burch Biscuit Company

United States Environmental Protection Agency, Complainant

7/21/11
Date

Cheryl L. Newton
Cheryl L. Newton
Director
Air and Radiation Division
U.S. Environmental Protection Agency
Region 5

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Docket No. CAA-05-2011-0034

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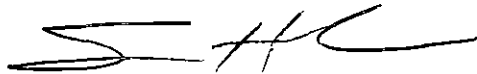
REGIONAL HEARING CLERK
USEPA
REGION 5

Final Order

This Consent Agreement and Final Order, as agreed to by parties, shall become effective immediately upon filing with the Regional Hearing Clerk. This Final Order concludes this proceeding pursuant to 40 C.F.R. §§ 22.18 and 22.31. IT IS SO ORDERED.

7-25-11

Date



Susan Hedman
Regional Administrator
U.S. Environmental Protection Agency
Region 5

Consent Agreement and Final Order
In the Matter of: Schulze & Burch Biscuit Company
Docket No. CAA-05-2011-0034

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Certificate of Service

I certify that I filed the original and one copy of the Consent Agreement and Final Order (CAFO), docket number CAA-05-2011-0034 with the Regional Hearing Clerk (E-19J), United States Environmental Protection Agency, Region 5, 77 W. Jackson Boulevard, Chicago, Illinois, 60604, and that I mailed a second original copy by first-class, postage prepaid, certified mail, return receipt requested, by placing it in the custody of the United States Postal Service addressed as follows:

Carey S. Rosemarin
Law Offices of Carey S. Rosemarin, P.C.
500 Skokie Boulevard, Suite 510
Northbrook, Illinois 60062

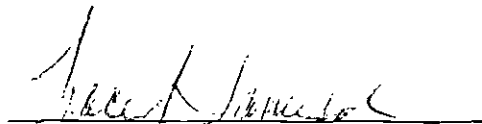
I certify that I mailed a copy of the CAFO by first-class mail, addressed as follows:

Mr. Ray Pilapil, Chief
Illinois Environmental Protection Agency
Bureau of Air – Compliance and Enforcement Section
1021 North Grand Avenue, East, P.O. Box 18276
Springfield, Illinois 62794-9276

I also certify that I delivered a copy of the CAFO by intra-office mail, addressed as follows:

Marcy Toney
Regional Judicial Officer
U.S. Environmental Protection Agency, Region 5
77 W. Jackson Boulevard/Mail Code C-14J
Chicago, Illinois 60604

On the 27 day of July 2011.


Tracy Jamison
Office Automation Assistant
Planning and Administration Section

CERTIFIED MAIL RECEIPT NUMBER:

7009 11646 0000 7140 2978